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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,285	03/18/2004	Thomas Chupak	DB000982-004	5640
24122	7590	03/17/2008	EXAMINER	
THORP REED & ARMSTRONG, LLP ONE OXFORD CENTRE 301 GRANT STREET, 14TH FLOOR PITTSBURGH, PA 15219-1425				CASTELLANO, STEPHEN J
ART UNIT		PAPER NUMBER		
3781				
		MAIL DATE		DELIVERY MODE
		03/17/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/803,285	CHUPAK, THOMAS
	<b>Examiner</b>	<b>Art Unit</b>
	/Stephen J. Castellano/	3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 December 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9, 12, 13, 15-20 and 22-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9, 12, 13, 15-20 and 22-24 is/are rejected.

7) Claim(s) 15, 16 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

Claims 15 and 16 are objected to because they are incomplete because they depend from canceled claim 14.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of claims 15 and 16 can't be determined because they depend from canceled claim 14.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diekhoff.

Diekhoff discloses a one-piece aluminum (series 3000 aluminum) can (see Fig. 28) with threaded neck finish, tapered shoulder, cylindrical sidewall, domed bottom free of wrinkles and the area of U-shaped profile at the periphery of the bottom. The initial thickness of 0.51 mm is an intermediate step in the process of forming the final product would not dictate either a final wall thickness equal to 0.51 mm, a wall thickness thinner or a wall thickness thicker. This limitation doesn't have any structural effect on the final formed can. Also, the brushed limitation

doesn't have any structural effect on the final formed can. The dimensions recited are within the ranges given in Diekhoff.

Re claim 1 and 22, Diekhoff discloses the invention except for the thickness sufficient to withstand 270 psi. Well known engineering principles indicate that larger wall thicknesses provide the capability to withstand larger internal pressures than smaller thicknesses within pressure vessels. As evidence of this, applicant states on page 8 in paragraph [0043] on lines 4 and 5 a known standard for pressure capacity, "some aerosol products require a can that withstands an internal pressure of 270 psi or DOT 2Q." It would have been obvious to increase a vessel's internal pressure capability by increasing wall thickness in order to allow the beverage package to withstand harsher treatment and therefore higher pressure of at least 270 psi without rupture or failure.

Re claim 5 and 16, Diekhoff teaches varying wall thickness in the embodiment of Fig. 30 with bottom area 95 in the range of 0.010 – 0.015 inch, lower vertical sidewall 93 in the range of 0.0045 – 0.0065 inch and upper sidewall 92 in the 0.0065 – 0.0085 inch range. The thickness ratio of bottom area 95 to lower sidewall area 93 is in the range of 2-3. The present invention's thickness ratio of bottom area (0.51 mm) to sidewall area (0.21 mm) is between 2-3. The sidewall thickness of 0.21 mm (0.00826 inch) is within the range given for the upper sidewall 92 of Diekhoff (0.0065 – 0.0085 inch). It is logical to assume that if one of ordinary skill in the beverage can art desired to increase pressure capacity that he would increase the thicknesses of the Diekhoff Fig. 30 can such that the ratio of bottom to sidewall thicknesses would be the same since in general the bottom thickness should be 2-3 times greater than the sidewall thickness. It would have been obvious to modify the vertical wall thickness of the lower vertical wall 93 to be

approximately 0.21 mm and to modify the bottom portion wall thickness (area 95) to be approximately 0.51 mm as a matter of design choice in selecting dimensions within the acceptable range when one of ordinary skill is increasing wall thickness for the purpose of allowing the beverage package to withstand harsher treatment and therefore higher pressure without rupture or failure.

Claims 12-13, 15, 17-20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diekhoff in view of applicant's prior art admission.

Diekhoff discloses a one-piece aluminum (series 3000 aluminum) can (see Fig. 28) with threaded neck finish, tapered shoulder, cylindrical sidewall, domed bottom free of wrinkles and the area of U-shaped profile at the periphery of the bottom. The initial thickness of 0.51 mm is an intermediate step in the process of forming the final product would not dictate either a final wall thickness equal to 0.51 mm, a wall thickness thinner or a wall thickness thicker. This limitation doesn't have any structural effect on the final formed can. Also, the brushed limitation doesn't have any structural effect on the final formed can. The dimensions recited within claim 18 are within the ranges given in Diekhoff.

Diekhoff discloses the invention except for the thickness sufficient to withstand 270 psi. Well known engineering principles indicate that larger wall thicknesses provide the capability to withstand larger internal pressures than smaller thicknesses within pressure vessels. As evidence of this, applicant states on page 8 in paragraph [0043] on lines 4 and 5 a known standard for pressure capacity, "some aerosol products require a can that withstands an internal pressure of 270 psi or DOT 2Q." It would have been obvious to increase a vessel's internal pressure

capability by increasing wall thickness in order to allow the beverage package to withstand harsher treatment and therefore higher pressure of at least 270 psi without rupture or failure.

Diekhoff teaches varying wall thickness in the embodiment of Fig. 30 with bottom area 95 in the range of 0.010 – 0.015 inch, lower vertical sidewall 93 in the range of 0.0045 – 0.0065 inch and upper sidewall 92 in the 0.0065 – 0.0085 inch range. The thickness ratio of bottom area 95 to lower sidewall area 93 is in the range of 2-3. The present invention's thickness ratio of bottom area (0.51 mm) to sidewall area (0.21 mm) is between 2-3. The sidewall thickness of 0.21 mm (0.00826 inch) is within the range given for the upper sidewall 92 of Diekhoff (0.0065 – 0.0085 inch). It is logical to assume that if one of ordinary skill in the beverage can art desired to increase pressure capacity that he would increase the thicknesses of the Diekhoff Fig. 30 can such that the ratio of bottom to sidewall thicknesses would be the same since in general the bottom thickness should be 2-3 times greater than the sidewall thickness. It would have been obvious to modify the vertical wall thickness of the lower vertical wall 93 to be approximately 0.21 mm and to modify the bottom portion wall thickness (area 95) to be approximately 0.51 mm as a matter of design choice in selecting dimensions within the acceptable range when one of ordinary skill is increasing wall thickness for the purpose of allowing the beverage package to withstand harsher treatment and therefore higher pressure without rupture or failure. It would have also been obvious to modify the wall thickness in view of changing the use of the can for packaging aerosol product rather than a beverage.

Re claims 23 and 24, the two piece can including the aluminum can and the plastic outsert is shown by Fig. 7, 37 and 38.

Applicant's arguments filed September 28, 2007 have been fully considered but they are not persuasive. The evidence shows by a prior art admission that an aluminum can having a 270 psi pressure capacity is well known in the aerosol can art. Therefore, applicant's invention is not that he developed an aerosol can capable of withstanding a pressure as high as 270 psi. The wall thickness dimensions are also derivable from well known engineering principles and the higher known pressure capacity. The calculated wall thickness of approximately 0.51 mm in the area of the bottom portion and the U-shaped profile is not inventive. When combined with the disclosure of Diekhoff which shows all the other elements, features and functional limitations in the claims, it must be concluded that the claims as now presented are not patentable.

The argument that Diekhoff and the present invention solve distinct problems alludes to an non-analogous art argument. In response to applicant's argument that Diekhoff is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Diekhoff is within the same field of endeavor as the present invention and Diekhoff, the two inventions share the features of aluminum cans of 3000 series aluminum formed of an essentially one-piece side and bottom with a domed bottom and a U-shaped profile an the periphery of the bottom. Diekhoff is analogous to the present invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc